

Assembly Bill No. 3101

CHAPTER 1105

An act to amend Section 5913 of, to add a heading of Article 1 (commencing with Section 5910) to, and to add Article 2 (commencing with Section 5914) to, Chapter 9 of Part 2 of Division 2 of Title 1 of, the Corporations Code, relating to public benefit corporations.

[Approved by Governor September 29, 1996. Filed
with Secretary of State September 30, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3101, Isenberg. Public benefit corporations: health facilities: sale of assets.

Existing law provides that a public benefit corporation may sell, lease, convey, exchange, transfer, or otherwise dispose of all or substantially all of its assets when the principal terms are approved by the board of directors and the members of the corporation and by any other person whose approval is required by the articles, except as specified. Existing law requires a public benefit corporation to give written notice to the Attorney General 20 days before it sells, leases, conveys, exchanges, transfers, or otherwise disposes of all or substantially all of its assets, except as specified.

This bill would subject a nonprofit corporation that is subject to the public benefit corporation law and is a health facility or provides similar health care to additional requirements prior to the corporation entering into any agreement or transaction to sell, transfer, lease, exchange, option, convey, or otherwise dispose of a material amount of its assets to a for-profit corporation or entity or to a mutual benefit corporation or entity, unless the agreement or transaction is in the usual and regular course of the activities of the corporation or unless the Attorney General has given the corporation a written waiver of these requirements as to the proposed agreement or transaction.

The bill would require the corporation to notify the Attorney General. The bill would require the Attorney General to conduct a public meeting and to notify the corporation in writing of his or her decision to consent, conditionally consent, or not consent to the agreement or transaction. The bill would authorize the Attorney General to adopt regulations, to contract with, consult, and receive advice from any state agency, and to contract with experts or consultants.

The bill would require the public benefit corporation to reimburse the Attorney General for costs in complying with its provisions, upon request of the Attorney General.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Charitable, nonprofit health facilities, including nonprofit hospitals, hold all of their assets in trust, and those assets are irrevocably dedicated, as a condition of their tax-exempt status, to the specific charitable purposes set forth in the articles of incorporation of nonprofit entities.

(b) The public is the beneficiary of the trust on which charitable, nonprofit health facilities hold their assets.

(c) Charitable, nonprofit health facilities have a substantial and beneficial effect on the provision of health care to the people of California, providing as part of their charitable mission uncompensated care to uninsured low-income families and under-compensated care to the poor, elderly, and disabled.

(d) Transfers of the assets of nonprofit, charitable health facilities to the for-profit sector, such as by sale, joint venture, or other sharing of assets, directly affect the charitable use of those assets and may affect the availability of community health care services.

(e) The state Attorney General is entrusted by law to bring actions on behalf of the public in the event of a breach of the charitable trust of a nonprofit entity and to represent the public in the sale or other transfer of the assets of a nonprofit entity.

(f) It is in the best interests of the public to ensure that the public interest is fully protected whenever the assets of a charitable nonprofit health facility are transferred out of the charitable trust and to a for-profit or mutual benefit entity.

(g) The consent of the state Attorney General shall be required for any transaction involving a nonprofit, charitable health facility when a material amount of the charitable assets are transferred to a for-profit or mutual benefit entity.

SEC. 2. A heading of Article 1 (commencing with Section 5910) is added to Chapter 9 of Part 2 of Division 2 of Title 1 of the Corporations Code, to read:

Article 1. General Provisions

SEC. 3. Section 5913 of the Corporations Code is amended to read:

5913. Except for an agreement or transaction subject to Section 5914, a corporation must give written notice to the Attorney General 20 days before it sells, leases, conveys, exchanges, transfers or

otherwise disposes of all or substantially all of its assets unless the transaction is in the usual and regular course of its activities or unless the Attorney General has given the corporation a written waiver of this section as to the proposed transaction.

SEC. 4. Article 2 (commencing with Section 5914) is added to Chapter 9 of Part 2 of Division 2 of the Corporations Code, to read:

Article 2. Health Facilities

5914. (a) Any nonprofit corporation that is subject to the public benefit corporation law and is a health facility, as defined in Section 1250 of the Health and Safety Code, or is a facility that provides similar health care, shall be required to provide written notice to, and to obtain the written consent of, the Attorney General prior to entering into any agreement or transaction to do either of the following:

(1) Sell, transfer, lease, exchange, option, convey, or otherwise dispose of, its assets to a for-profit corporation or entity or to a mutual benefit corporation or entity when a material amount of the assets of the public benefit corporation are involved in the agreement or transaction.

(2) Transfer control, responsibility, or governance of a material amount of the assets or operations of the nonprofit public benefit corporation to any for-profit corporation or entity or to any mutual benefit corporation or entity.

(b) The notice to the Attorney General provided for in this section shall include and contain the information the Attorney General determines is required.

(c) This article shall not apply to a public benefit corporation if the agreement or transaction is in the usual and regular course of its activities or if the Attorney General has given the corporation a written waiver of this article as to the proposed agreement or transaction.

5915. Within 60 days of the receipt of the written notice required by Section 5914, the Attorney General shall notify the public benefit corporation in writing of the decision to consent to, give conditional consent to, or not consent to the agreement or transaction. The Attorney General may extend this period for one additional 45-day period, provided the extension is necessary to obtain information pursuant to subdivision (a) of Section 5919.

5916. Prior to issuing any written decision referred to in Section 5915, the Attorney General shall conduct one or more public meetings, one of which shall be in the county in which the facility is located, to hear comments from interested parties. At least 14 days before conducting the public meeting, the Attorney General shall provide written notice of the time and place of the meeting through publication in one or more newspapers of general circulation in the

affected community and to the board of supervisors of the county in which the facility is located.

5917. The Attorney General shall have discretion to consent to, give conditional consent to, or not consent to any such agreement or transaction described in subdivision (a) of Section 5914. In making the determination, the Attorney General shall consider any factors that the Attorney General deems relevant, including, but not limited to, whether any of the following apply:

(a) The terms and conditions of the agreement or transaction are fair and reasonable to the nonprofit public benefit corporation.

(b) The agreement or transaction will result in inurement to any private person or entity.

(c) Any agreement or transaction that is subject to this article is at fair market value. In this regard, “fair market value” means the most likely price that the assets being sold would bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and in their own best interest, and a reasonable time being allowed for exposure in the open market.

(d) The market value has been manipulated by the actions of the parties in a manner that causes the value of the assets to decrease.

(e) The proposed use of the proceeds from the agreement or transaction is consistent with the charitable trust on which the assets are held by the health facility or by the affiliated nonprofit health system.

(f) The agreement or transaction involves or constitutes any breach of trust.

(g) The Attorney General has been provided, pursuant to Section 5250, with sufficient information and data by the nonprofit public benefit corporation to evaluate adequately the agreement or transaction or the effects thereof on the public.

(h) The agreement or transaction may create a significant effect on the availability or accessibility of health care services to the affected community.

(i) The proposed agreement or transaction is in the public interest.

5918. The Attorney General may adopt regulations implementing this article.

5919. (a) Within the time periods designated in Section 5915 and relating to those factors specified in Section 5917, the Attorney General may do the following:

(1) Contract with, consult, and receive advice from any state agency on those terms and conditions that the Attorney General deems appropriate.

(2) In his or her sole discretion, contract with experts or consultants to assist in reviewing the proposed agreement or transaction.

(b) Contract costs shall not exceed an amount that is reasonable and necessary to conduct the review and evaluation. Any contract entered into under this section shall be on a noncompetitive bid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code. The nonprofit public benefit corporation, upon request, shall pay the Attorney General promptly for all contract costs.

(c) The Attorney General shall be entitled to reimbursement from the nonprofit public benefit corporation for all actual, reasonable, direct costs incurred in reviewing, evaluating, and making the determination referred to in this article, including administrative costs. The nonprofit public benefit corporation shall promptly pay the Attorney General, upon request, for all such costs.

